

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JOSEPH M. ANDERSON,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 3:18-cv-00426-MMD-CLB

ORDER

Pro se Plaintiff Joseph M. Anderson brings this action pursuant to 42 U.S.C. § 1983. (ECF No. 23.) On February 15, 2022, Defendants filed a suggestion of death on the record as to Defendant Richard Snyder, a former chaplain and member of the Religious Review Team of the Nevada Department of Corrections (“NDOC”). (ECF No. 256.) The Court ordered a motion for substitution (“Motion”) to be filed within 90 days, or the decedent will be dismissed. (ECF No. 258.) Before the Court is Anderson’s timely-filed Motion,¹ where he requests Defendants’ assistance in naming the successor or representative for Snyder. (ECF No. 260.) As further explained below, the Court will grant the Motion in part by requiring the Nevada Attorney General’s Office (“AG”) to identify Snyder’s successor in interest. However, the Court will deny the Motion in part because Snyder may not remain a Defendant in this case after his death. The Court also denies Anderson’s requests to reopen discovery and seize Snyder’s assets, and further declines to hold a hearing on any of these issues.

“If a party dies and the claim is not extinguished, the court may order substitution of the proper party.” Fed. R. Civ. P. 25(a)(1). The motion for substitution must be filed “within 90 days after service of a statement noting the death.” *Id.* To trigger this 90-day

¹Defendants filed a response to the Motion (ECF No. 261) and Anderson filed a reply (ECF No. 265).

1 period, “[f]irst, a party must formally suggest the death of the party upon the record . . .
 2 Second, the suggesting party must serve other parties and nonparty successors or
 3 representatives of the deceased with a suggestion of death in the same manner as
 4 required for service of the motion to substitute.” *Barlow v. Ground*, 39 F.3d 231, 233 (9th
 5 Cir. 1994) (citations omitted). The Ninth Circuit has held that the party responsible for
 6 identifying the decedent’s successor is the party who is in the best position to do so. See
 7 *Gilmore v. Lockard*, 936 F.3d 857, 866-67 (9th Cir. 2019). In the context of inmate
 8 litigation, this burden often lies with the state attorney general, who is “significantly better
 9 positioned” than an incarcerated *pro se* plaintiff with limited resources, to ascertain the
 10 proper successor or representative. See *id.* at 866. Shifting the onus to a *pro se* litigant
 11 may place him “at a tactical disadvantage” and “would defeat the purpose of Rule 25(a):
 12 to preserve parties’ rights and causes of action when a party dies.” *Id.* Hence, to trigger
 13 the 90-day deadline for filing a motion for substitution, the state attorney general must
 14 either serve the decedent’s successor, or *at the very least*, identify the proper successor
 15 or representatives. See *id.* at 867.

16 In his Motion, Anderson contends that, as an incarcerated litigant, he does not
 17 have the resources or knowledge to ascertain Snyder’s² successor or representative and
 18 asks the Court and Defendants for assistance. (ECF No. 260 at 1, 6.) Like in *Gilmore*,
 19 where a defendant also died in the middle of litigation and the state attorney general
 20 notified the plaintiff, the AG here is in a significantly better position to identify Snyder’s
 21 successor than Anderson. This is particularly true, given that the AG represented Snyder
 22 and has an existing relationship with the NDOC. See *Gilmore*, 936 F.3d at 866.
 23 Defendants’ filing of a suggestion of death for Snyder, without more, is insufficient under
 24

25 ²In his reply, Anderson argues that it is necessary to keep Snyder as a Defendant
 26 in the lawsuit because his “causes of action stemmed from [Snyder’s] direct actions and
 27 inactions.” (ECF No. 265 at 4.) The Court denies Anderson’s request because the Ninth
 28 Circuit has held that “a party cannot maintain a suit on behalf of, or against, or join, a dead
 person, or in any other way make a dead person (in that person’s own right, and not
 through a properly-represented estate or successor) party to a federal lawsuit.” *LN Mgmt.,
 LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 955 (9th Cir. 2020).

1 Rule 25. (ECF No. 256.) *Gilmore* requires that the AG, *at a minimum*, identify Snyder's
2 successor or representatives to trigger the 90-day window. See 936 F.3d at 867. The
3 Court therefore directs the AG to comply with their obligations under *Gilmore*.³

4 It is therefore ordered that Anderson's motion for substitution (ECF No. 260) is
5 granted in part and denied in part.

6 It is further ordered that the Attorney General's Office must file a notice identifying
7 the party for substitution within 30 days of the date of this order. If the Attorney General's
8 Office is unable to ascertain the appropriate party for substitution, they must file a status
9 report outlining the diligent, step-by-step efforts taken to try to identify Snyder's successor
10 or representatives.


11 It is further ordered that Anderson's request for limited discovery and/or to reopen
12 discovery is denied.

13 It is further ordered that Anderson's request for a court hearing to determine
14 Snyder's successor or representatives is denied.

15 It is further ordered that Anderson's request to keep the decedent, Richard Snyder,
16 as a Defendant is denied.

17 It is further ordered that Anderson's request to seize Snyder's property or assets
18 is denied.

19 DATED THIS 24th Day of March 2022.

20 
21 _____
22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
24
25
26

27 ³Defendants' terse description of their record search for Snyder's estate is
28 insufficient to meet their obligations under *Gilmore*, where Defendants must "at a
minimum" identify the decedent's successor or personal representatives. See 936 F.3d
at 867.